LABOUR AND EMPLOYMENT DEPARTMENT

The 7th January, 1967

No. 159-3Lab. 67/1028.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act, No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and management of M/s Escorts Limited, Faridabad:—

BEFORE SHRI HANS RAJ GUPTA, PRESIDING OFFICER, LABOUR COURT, ROHTAK

REFERENCE No. 14 OF 1966

BETWEEN

THE WORKMEN AND THE MANAGEMENT OF M/s ESCORTS LIMITED, FARIDABAD

Present :—

Shri Gian Parkash, claimant with Shri Satish Loomba, for the workmen.
Shri K.K. Khullar, on behalf of the management .

AWARD

An industrial dispute having arisen between the workmen and the management of M/S Escorts Limited, Faridabad, the State Government by means of their gazette notification No. 288-SF-3-Lab-1-66, dated 28th April, 1966 and in exercise of the powers conferred on them by section 10(1) (c) of the Industrial Disputes Act, 1947 have referred to this Court for adjudication the matter mentioned below:—

Whether the dismissal/termination of services of Shri Gian Parkash is justified and in order? If not, to what relief he is entitled?

Usual notices were issued to the parties and in response thereto the workmen filed their statements of claims and the respondent-management filed their written statement. The workmen have filed three statements of the claims dated 8th June, 1966, 30th June, 1966 and 19th September, 1966. It is admitted by them that the management issued a charge sheet dated 18th November, 1965 to the claimant Shri Gian Parkash who submitted a written explanation to that charge sheet. It is also admitted that an enquiry was held by the management against Shri Gian Parkash as a result of which he has been discharged from service. Certain objections have been taken by the workmen against the validity of the domestic enquiry held in this case and these objections have been discussed in a later part of this award. It was also pleaded by the workmen that the claimant Shri Gian Parkash was an office-bearer of the workmen of the respondent concerned and the management have taken action against him only to victimize him for his trade union activities. It was also pleaded by the workmen that the allegations made against Shri Gian Parkash in the charge sheet issued to him do not amount to any misconduct under the certified standing orders of the respondent concern. It was further pleaded that Shri Sawaranjit Singh, Vice-President of the respondent company had not jurisdiction under the standing orders to terminate the services of the workman Shri Gian Parkash and therefore the termination of his services is void and bad in law. At a very late stage of the case it was also pleaded by the workmen that under the certified standing orders of the respondent company the order of discharge passed against the claimant was illegal and without jurisdiction.

The respondent-management have pleaded that the claimant Shri Gian Parkash raised defamatory and insulting slogans against the senior officers of the Company including the President of the company and the personnel manager 18th October, 1965 and was also responsible for late entry of the workmen after lunch interval on that date. It is stated that on 15th November, 1965 Shri Gian Parkash again raised insulting and derogatory slogans against the senior officers of the Company. On that day also he was responsible for delaying the workers to attend to their duties after lunch interval. It is stated that Shri Gisn Parkash was warned by the management in writing for the misconduct committed by him on 18th October, 1965 and 15th November, 1965. It is further stated that on 16th November, 1965 Shri Gian Parkash again raised objectionable and derogatory slogans against the President, Vice-President and other senior officers of the respondent company in a meeting of the workers at the gate of the factory. He was responsible for making the workers late by ten minutes after lunch interval on that date. It is pleaded that Shri Gian Parkash was charge-sheeted on 18th November, 1965 and he gave his explanation to the charge sheet on 19th November, 1965 and as his explanation was found to be unsatisfactory, a domestic enquiry was held against him and the enquiry officer found the charges levelled against him as proved. It is said that the management although competent to dismiss the claimant on those charges merely discharged him from service by their letter, dated 13th January, 1966. It has been pleaded that the services of the claimant have been terminated

by the management as a result of a proper and fair domestic enquiry conducted against him and therefore this Court cannot interfere in the order of termination of the workman concerned.

On the pleadings of the parties, the following issues were framed:—

1. Whether the enquiry held by the management against Shri Gian Parkash is invalid for the reasons stated in the statement of claim of the workmen.
2. Whether Shri Gian Parkash has been victimized by the management on account of his trade union activities?
3. Whether the allegations contained in the charge sheet issued to Shri Gian Parkash do not amount to a misconduct under the certified standing orders applicable to the respondent concern?

3-A. Whether the services of Shri Gian Parkash have not been terminated by a competent authority and if so, what is its effect?

3-B. Whether the discharge of the claimant Shri Gian Parkash from service by the management is illegal and without jurisdiction under the certified standing orders applicable to the respondent company?

4. If any of the above three issues is decided against the management, whether the termination of services of Shri Gian Parkash is justified and in order? If not, to what relief he is entitled?

Issues Nos. 1 to 3, 3A and 3B were treated as preliminary issues and the parties have led their evidence and addressed their arguments on these preliminary issues. I now proceed to discuss these issues one by one.

*Issue No.*1.—In their statements of claim dated 8th June, 1966 and 30th June, 1966 the workmen have mentioned the following grounds on account of which according to them the enquiry held by the management is invalid:—

(1) The inquiry is faulty because the workman was not allowed to put all questions in cross-examination.

(2) The inquiry is faulty because the management's representative went out repeatedly while the examination of the management's witnesses was being recorded.

(3) Shri Gian Parkash claimant applied in writing for a copy of the enquiry proceedings but the Enquiry Officer refused to supply the same.

(4) The personnel Manager had no jurisdiction under the standing orders to order any enquiry against the worker and therefore the enquiry and all consequances flowing therefrom are void *ab initio*.

During his arguments addressed to this Court by the learned authorised representative of the workmen, non of the above grounds was touched by him. He only argued that on one occasion the workman requested the Enquiry Officer to re-call two witnesses of the management for cross esamination by the workmen out the Enquiry Officer refused to do so. He was asked to point out from the enquiry proceedings where this request had been made and dis-allowed by the Enquiry Officer. He could not find any such objection of the workmen in the enquiry proceedings. Even if the workmen had made such a request and the same had been disallowed by the Enquiry Officer. that by itself would not make the enquiry proceedings vitiated unless it were shown that the refusal of the Enquiry Officer was not bona-fide but was the result of the desire on the part of the Enquiry Officer to deprive the claimant of an opportunity to establish his innosence. There is absolutely nothing on the presen trecord for such an inference. In the case reported as 1963-II-LL J429, their Lordships of the Supreme Court have held that where at a domestic enquiry the Enquiry Officer refused to examine a witness, which the charge-sheeted employee wanted to produce in his defence, that fact in itself did not vitiate the enquiry and the Enquiry Officer was within his rights to decide whether the testimony of that witness would be relevant or not. In the present case my attention has not been invited to any portion of the enquiry proceedings where the alleged request was made by the workman and refused by the Enquiry Officer. Even if such a request was refused, the Enquiry Officer was within his rights to do so if he thought that the re-call of the witnesses in question was not necessary.

As stated above no other point regarding the validity of the enquiry proceedings was urged on behalf of the workmen during their arguments. As, however, some grounds have been mentioned in their pleadings, I proceed to dispose them of. The first ground is that the workman was not allowed to put all questions in cross examination of the management's witnesses. Shri Gian Parkash claimant in his testimony before this Court has admitted that whenever the Enquiry Officer disallowed any question put by him or his representative to a witness, that fact was recorded by the Enquiry Officer in the enquiry proceedings. My attention has not been drawn to any order of the enquiry officer in which he disallowed any

question without any justification. A reference to the enquiry proceedings shows that the witnesses of the management were cross-examined by the workmen at great length. I also find that the Enquiry Officer at several places has recorded the cross examination of the management's witnesses in the form of questions and answers. In several cases the cross examination of a management's witness runs into several pages. There is, therefore, no justification for the allegation of the workmen that the enquiry officer did not allow them to cross examine the witnesses of the other side thoroughly. As regards the second objection of the workmen that the representative of the management went out repeatedly while the examination of the management's witnesses was being recorded, there is no evidence on the record to substantiate this objection. This objection has been disposed of by the Enquiry Officer on pages 37 and 38 of the enquiry proceedings. These pages have been signed by the claimant Shri Gian Parkash and his representative. The relevant order of the Enquiry Officer is in these words:—

> "The second objection of Shri Gian Parkash is that the representative of the management goes out during the proceedings and guides the other witnesses. Shri Gian Parkash has not said when the management's representative went out. Both the parties are instructed that during the enquiry proceedings, they cannot go out and guide their witnesses."

I do not think there is any force in the second objection raised on behalf of the workmen. The third objection is that the claimant although applied in writing for a copy of the enquiry proceedings was not supplied the same by the Enquiry Officer. It is true that by his application dated 9th December, 1965 (Ex RP/1) the claimant represented to the Enquiry Officer that a copy of the enquiry was not being supplied in accordance with the decision of the sixteenth Labour Conference. In this connection the Enquiry Officer passed the following order:—

> "Shri Gian Parkash in this connection has referred to the Sixteenth Labour Conference. He says that in accordance with the decision of that conference, he should be supplied with a copy of the enquiry proceedings. I am not aware of any such decision. If he has got a copy of that decision, he should produce it. If Shri Gian Parkash wants a copy of the enquiry proceedings or any other document, he should make a request to the management."

It is not denied that the entire enquiry proceedings took place in the presence of the claimant and his representative. It was open to them to inspect the file at any time they liked. No authority has been shown to me under which the Enquiry Officer must supply to the workmen a copy of the enquiry proceedings. It is not correct to say as alleged by the workmen, that the Enquiry Officer refused to supply a copy of the enquiry proceedings to them. He wanted the claimant to show him the authority under which he was demanding a copy of the enquiry proceedings and that authority, if such an authority is there, was never shown to the Enquiry Officer. In these circumstances I do not think that this objection of the workmen can vitiate the enquiry proceedings. The last objection to the validity of the enquiry proceedings is also devoid of any force. My attention has not been drawn to any standing order applicable to the respondent company under which the personnel manager of the respondent company could not issue a charge sheet or order an enquiry against the delinquent. Ex. RP/7 is a copy of the office order dated 25th June, 1964 issued by Shri Swaranjit Singh vice-president of the company regarding the arrangements as regards issues of charge sheets, appointment of enquiry officers and other matters in connection with departmental enquiries and taking disciplinary action against the workmen. This office order provides that all the enquiries against the workmen will generally be held by Mr. R. N. Roy who had held the present enquiry. This office order also lays down that the personnel manager would issue charge sheets, intimate the appointment of an enquiry officer to the workmen and sign all correspondence in connection with departmental enquiries with workmen and employees on behalf of the management. The personnel manager was, therefore, quite competent to issue a charge sheet to the claimant Shri Gian Parkash and also to ask him to appear before Shri R. N. Roy enquiry Officer for an enquiry to be conducted against him. The learned representative of the workmen did not advance any arguments in support of this objection. For the above reasons I am of the view that the four objections raised by the workmen in their statements of claim against the validity of the domestic enquiry have no force. It is admitted that a charge sheet was issued to the workman concerned and he submitted his explanation. A very lengthy enquiry has been held in this case and the claimant and his representative were present throughout the enquiry. A number of witnesses were produced by the management and the workman have subjected them to lengthy cross examination. The workmen then produced their own witnesses and the case was closed only when the claimant stated that he had no more witnesses to be produced. The claimant in his testimony before this Court on 21st July, 1966 has admitted that the record of the enquiry proceedings is correct. Nothing has been shown which can invalidate the enquiry proceedings. I, therefore, hold that the workmen have failed to prove that the domestic enquiry conducted in this case is not valid. Issue No. 1 is decided against them.

Issue No. 2.—There is no proof on the record to suggest that the claimant Shri Gian Parkash has been victimized by the management on account of any trade union activities. The only evidence led by the workmen in these proceedings is the bald statement of the claimant Shri Gian Parkash. He admits in his testimony that the union of the workmen of the respondent company has a membership of over one thousand. He also admits that the executive of the union has one president, two vice-presidents, two secretaries, two joint secretaries, two cashiers, one propoganda secretary and one general secretary, i.e., at least ten office bearers. Besides there are twelve or thirteen committee members. Not a single person from the union of the workmen has come forward to depose in favour of Shri Gian Parkash that he has been dismissed by the management only to victimise him for any trade union activities on his part. Even Shri Gian Parkash claimant in his testimony given in these proceedings on oath has not mentioned any activities on his part as an office bearer of his union on account of which the management have victimised him. All that he has said in his testimony is that the management have dismissed the general secretary of the union and h ve suspended two other office bearers of the union Sarvshri Darshan Lal and Reashat Ali Khan even if this statement is corrrect, it does not prove that the dismissal of the claimant Shri Gian Parkash is not *bona fide* and the action has been taken by the management against him by way of victimization. The workmen have miserably failed to prove that Shri Gian Parkash has been victimized by the management on account of his trade union activities. I decide issue No. 2 against the workmen.

*Issue No.*3.—One of the charges against the claimant contained in the charge-sheet dated 18th November, 1965, is that on 16th November, 1965, during lunch at a gate meeting he raised the following objectionable derogatory and subversive of discipline slogans:—

"DOLLY NANDA MURDABAD"
"H.P. NANDA MURDABAD"
"SWARANJIT SINGH MURDABAD"
"KHOSLA MURDABAD"
"UPPAL MURDABAD"
"GENERAL AYUB MURDABAD"
"KHOSLA SHAHI NAHIN CHALEGI"
"UPPAL SHAHI NAHIN CHALEGI"

Mrs Dolly Nanda is the manager of administration at the Head Office of the respondent company. Shri H. Parshad Nanda is the president of the company. Shri Swaranjit Singh is the vice-president of the company and the highest executive officer in the factory in which the claimant worked. Shri Khosla was personnel manager at that time and Shri Uppal was the security officer. It is not possible to agree with the contention of the learned representative of the workmen that to shout slogans of "Murdabad" against the president, the vice-president and other senior officers of the respondent company and to compare them to General Ayub do not constitute any misconduct on the part of the employee *qua* is employers. The contention of the learned representative of the workmen is that acts of misconduct have been defined in standing order No. 21 of the certified standing orders of the respondent company and that the raising of the above slogans does not amount to a misconduct under any of the thirty-one clauses of standing order No. 21 mentioned above. As held in 1954-II-LLJ-103 (Union Tile Works, Chengamanad *Vs.* their employees) by the Industrial Tribunal, Ernakulam, it is impossible to fore-see and enumerate all possible and imaginable acts of misconduct within the ambit of an industrial standing order. The acts of misconduct enumerated in standing order are enumerative and not exhaustive. A workman could be dismissed for an act of misconduct though not falling within one enumerated in the standing order of the industry concerned. In an industry the relation between the management and the worker should be cordial and the workman should be subject to the discipline of the factory. If a workman could threaten and abuse a manager to achieve his ends whether justifiable or not his conduct must be characterized as one subversive of all discipline. Such high handed act and objectionable behaviour on the part of the workmen are prejudicial to the smooth and proper working of an industry. Hence dismissal of a workman found guilty of using abusive language to the manager and intimidating him, was held justified.

The learned representative of the management cited 1960-I-LLJ-167 (Shardaprasad Onkarprasad Tiwari and others Versus Central Railway) and 1962-II-LLJ-507 (Jagmohandas Jagjivandas Mody *Vs.* State of Bombay) judgments of the Bombay and Gujarat High Courts respectively to show that under the common law relating to master and servant, it is an implied term of the contract of service that a master is entitled to dismiss his servant for various reasons such as—

(i) if the act or conduct is prejudicial or likely to be prejudicial to the interests of the master or to the reputation of the master;
(ii) if the act or conduct is inconsistent or incompatible with the due or peaceful discharge of his duty to his master;

(iii) if the act or conduct of a servant makes it unsafe for the employer to retain him in service;
(iv) if the act or conduct of the servant is so grossly immoral that all reasonable men will say that the employee cannot be trusted;
(v) if the act or conduct of the employee is such that the master cannot rely on the faithfulness of his employee;
(vi) if the act or conduct of the employee is such as to open before him temptations for not discharging his duties properly;
(vii) if the servant is abusive or if he disturbs the peace at the place of his employment;
(viii) if he is insulting and in subordinate to such a degree as to be incomepatiable with the continuance of the relation of master and servant;
(ix) if the servant is habitually negligent in respect of the duties for which he is engaged;
(x) if the neglect of the servant, though isolated, tends to cause serious consequences.

This is so whether these misconducts have or have not been provided for in the certified standing orders of a concern. The ten illustrative types of misconduct enumerated above are illustrative of implied conditions of service would include conditions that the servant would be trustworthy, that his acts would justify the confidence of the employer, that the employee will not so act as to prejudice or damage the interests of the employer, that the employee would not act or conduct or behave himself in a way, inconsistent or incompatible with the faithful discharge of his duties to the employer, that he would not behave in an insulting or insubordinate manner, that he would not habitually be negligent, etc. These are all implied conditions of employment. The illustrative types of misconducts enumerated above are an application of the fundamental principle that to justify dismissal the servant must contravene the express or implied conditions of his service. Every employees is always expected to be faithful in the discharge of his duties and to justify the trust reposed in him by his employer. Every employee is expected to behave himself so as not to damage or prejudice the interest or reputation of his master whatever be the sphare of activities of the employee. These principles will be applicable to every employee right from the beginning of his employment up to the termination of his employment. They are not additional duties.

It cannot be seriously denied that the slogans raised by the claimant in this case against the president, the vice-president and other senior officers of the respondent concern are not abusive and do not disturb the peace at the place of his employment. The raising of these slogans at a meeting of the workmen of the respondent concern at the gate of the factory of the respondent certainly amounts to misconduct on the part of the claimant *qua* the management in this case. This would ha e been the position even if the action of the claimant had not been covered by standing order No. 21 of the certified standing orders of the respondent company. This standing order No. 21 which defines the acts of misconduct opens with the following words:—

"Without prejudice to the general meaning of the term 'Misconduct", it shall be deemed to mean and include the following".

The above opening words of standing order No. 21 clearly show that the list of misconducts mentioned in the thirty-one clauses of that standing order is not exhaustive and even if the action of an employee does not fall under any of those clauses, it may be misconduct if it is otherwise so under the law relating to master and servant. The contention of the learned representative of the workmen that the action of the claimant in raising the slogans in question is not a misconduct under any of the thirty-one clauses of standing order No. 21 is not correct. Under clause sixteen of standing order No. 21 any act subversive of discipline amounts to misconduct. It cannot be seriously denied that the raising of such abusive and derogatory slogans against the employers by an employee in a meeting of the workmen of his employer is an act of subversive of discipline on the part of the employee concerned. The learned representative of the workmen argued that clause sixteen of that standing order No. 21 applies only to the acts of the employees committed within the premises of the Works where the employee is working. There is absolutely no warrant for this suggestion. A perusal of the different clauses of standing order No. 21 shows that where the intention was that an act committed by an employee should be a misconduct only if it is committed within the premises of the Works, this intention has been expressly disclosed by the wording used in the clause concerned. Reference in this connection may be made to clauses 18, 20, 23, 28 and 29 in which the words such as 'in the factory premises', 'in or about the factory premises', 'within the boundaries of the Works' 'inside the Works premises' and 'within the Works premises' have been used to make the intention manifest. The learned representative of the management has cited a number of rulings in support of his contention that acts and ommissions of an employee even outside the premises of the business can amount to misconduct on the part of the employee.

I am clear in my mind that shouting of the slogans of the type shouted in the present case against high officers of the management is an act subversive of discipline. In his explanation to the charge-sheet furnished by the claimant Shri Gian Parkash , while denying that he shouted the slogans in question he has himself described them as 'nonsense'. The slogans are certainly objectionable, abusive and derogatory and constitute a misconduct on the part of Shri Gian Parkash claimant. Issue No. 3 is decided in favour of the management and against the workmen.

Issue No. 3A.—This issue is based upon the plea raised by the workmen in their additional statement of claim dated 30th June, 1966, which is in these terms:—

> "That Shri Swaranjit Singh, vice-president, has no jurisdiction under the standing order to terminate the services of the workman and therefore the dismissal order is void and bad in law."

Ex. RP/2 is the appointment letter in respect of the claimant Shri Gian Parkash. This appointment letter has been signed by Shri Swaranjit Singh, vice-president of the respondent company. He is thus the appointing authority of the claimant Shri Gian Parkash . If he is the appointing authority, he is also competent to terminate his services. Ex. RP/6 is a copy of the power of attorney executed by the directors and the secretary of the company in favour of Shri Swaranjit Singh, vice-president. Clause 2 of that power of attorney empowers him to appoint, employ, promote, discharge or replace the employees of the company. Shri Swaranjit Singh, vice-president, was, therefore, quite competent to discharge the claimant Shri Gian Parkash from service. Mr. Satish Loomba argued that the power of attorney had been executed by the directors of M/s Escorts Limited, Partap Building, Connaught Circus, New Delhi, whereas in the certified standing orders, 'the company' has been defined as Escorts Limited, Faridabad. The learned representative of the management stated at the bar that the head office of the company is at New Delhi at the address given in the power of attorney and it is, therefore, that the address of the company in the power of attorney has been shown as New Delhi and not as Faridabad. This is a satisfactory explanation. The other point urged by the learned representative of the workmen was that the authority which can inflict a punishment under standing order No. 22. of the certified standing orders is the management and Shri Swaranjit Singh, vice-president of the company cannot be said to be the management of the company. To me this argument appears to be devoid of any force. It is in evidence that Shri Swaranjit Singh is the manager of the respondent factory under the Indian Factories Act and that he is the highest officer on the management side in the Works in which the claimant Shri Gian Parkash used to work. The claimant Shri Gian Parkash was appointed in the factory by him. The argument of Shri Loomba that there are several other managers in the respondent factory and all of them jointly constitute the management has no force. Shri R.N. Roy, Assistant Personnel Manager of the respondent concern has appeared as a witness on behalf of the management and he has deposed that the other managers are not concerned in the matter and that it is the vice-president alone who is concerned with dismissal or termination of services of the workmen. I am satisfied that Shri Swaranjit Singh the vice-president of the company was competent to terminate the services of the claimant Shri Gian Parkash. Issue No. 3A is decided against the workmen.

Issue No. 3B. –Shri Satish Loomba on behalf of the workmen contended that the punishments that can be awarded to an employee for misconducts have been provided for in order No. 22 of the certified standing orders applicable to the respondent company. A copy of these certified standing orders has been exhibited as Ex. RP/8 in these proceedings. Shri Satish Loomba has argued that an employee can be discharged under order No. 42 only of these certified standing orders and the present case is not covered by that order. Order No. 22 provides that an employee shall be liable to be dismissed if he has been guilty of misconduct after he has been given full opportunity to defend himself in a domestic enquiry in accordance with the standing orders. It further provides that an employee dismissed for misconduct shall not be entitled to any notice or pay in lieu of notice and shall not be entitled to any benefits or privileges under these orders. It further says that in awarding punishment under this standing order, the management shall take into account the gravity of the misconduct, the previous record of the workman and any other extenuating or aggravating circumstances that may exist. This standing order further provides that the company may at its discretion give the employee the following punishments in lieu of dismissal—

(i) a censure or warning, or
(ii) suspend him without pay from work for a period not exceeding four days, or
(iii) with-hold his scale increment, reduce his salary or demote him.

It has been contended by the learned representative of the workmen that as the punishment of discharge is not mentioned in standing order No. 22, the management were not entitled to discharge the claimant Shri Gian Parkash form their service and therefore the termination of services of the claimant by the management is illegal and without jurisdic-

tion under the certified standing orders applicable to the respondent company. A similar contention was raised in the case reported as 1954-II-LLJ-642 [Lever Brothers (India) Limited, *versus* Bhagwati Prasad Man. a Kalwar] decided by the Labour Appellate Tribunal of India at Bombay. In that case standing order 16 of the company provided the punishments of warning or censure, of suspension not exceeding four days and of dismissal for a misconduct committed by the employee. The Hon'ble Labour Appellate Tribunal were pleased to observe as follows while disposing of the contention of the workmen that the punishment of discharge could not be granted by the management under the relevant standing order:—

"Under the standing order the management, on the misconduct being established was entitled to terminate the employment of the opponent forthwith by way of dismissal. Instead, it is proposed to terminate his employment by way of discharge and, whereas the company need not have paid him any thing on the termination of his employment, the company proposes to give him thirteen days' wages and to let him reap such advantages as may accrue to him form being discharged instead of being dismissed. Apart from this, there is no charm for the use of the word "discharge" in place of the word "dismissal". That being so, the action proposed is of the same kind as, and less severe than, the action sanctioned by the standing order. Hence, on the principle that the power to do the greater includes the power to do the lesser, we would hold that punishment by discharge is within the power of the company under standing order 16."

It is obvious that the power to dismiss an employee includes the power to merely discharge him. Relying upon the above decision I hold that the management were within their right to discharge the claimant Shri Gian Parkash under standing order No. 22 of the certified standing orders applicable to the respondent concern. I may go a step further and say that standing order No. 42 quoted by the learned representative of the workmen empowers the management to discharge a monthly paid workman like the present claimant for a misconduct without giving him any notice. Standing order No. 42 provides that the services of a permanent employee may be terminated due to reason other than misconduct, retrenchment or closed down by giving him one month's notice in writing or one month's salary in lieu of that notice. It gives some illustrations of the circumstances in which the services of a permanent employee may be so terminated. This standing order also provides that no notice shall be necessary if the services of a monthly paid or daily rated employee are dispensed with for misconduct. Ex. RP/2 is the appointment letter in respect of the claimant Shri Gian Parkash and it shows that he was a monthly paid employee. The management were, therefore, entitled to discharge him for his misconduct without any notice under standing order No. 42 also. It was contended by Mr. Satish Loomba that after the enquiry had been held by the management in which enquiry according to them the misconduct against the employee had been proved, the conduct of the management in discharging the claimant instead of dismissing him showed their *mala fide*. I have not at all been able to appreciate this contention. In their letter dated 13th January, 1966 under which the management have intimated the factum of discharge to the claimant Shri Gian Parkash, the management have stated as follows—

> "The charges levelled against you and proved against you at the enquiry being grave and serious, the punishment warranted is that of dismissal. Under the circumstances we would have been justified in dismissing you from service. However, in consideration of the fact that the record of your previous service with us is clean, as a generous gesture it has been decided to discharge you from service. Accordingly, you are hereby discharged from service with immediate effect. You may collect your final settlement dues from the office on any working day."

The above quotation from the management's letter shows that the management had discharged the claimant instead of dismissing him only as a gesture of generosity. The learned representative of the workmen has not been able to convince me how the action of the management in awarding the punishment of discharge instead of dismissa lwas *mala fide*. There was nothing to debar the management from awarding the punishment of dismissal to the claimant and I have not been able to under stand how the management would have worsened their position if they had chosen to award the punishment of dismissal in this case. For all these reasons, I am of the view that the management were wihtin their right to discharge the claiment Shri Gian Parkash under the certified standing orders applicable to them. Issue No. 3 B is, therefore, decided against the workmen.

The result is that I hold that Shri Gian Parkash has been discharged from service by the management validly after a proper and fair domestic enquiry held against him. The termination of his services, therefore, is justified and in order and he is not entitled to any relief. The parties will bear their own costs of these proceedings.

This award is submitted to the Government of Haryana, Department of Labour as required under Section 15 of the Industrial Disputes Act, 1947.

The 30th December, 1966.

(HANS RAJ GUPTA),
Presiding Officer, Labour Court,
Rohtak.

The 10th January, 1967

No. 243-3Lab. 67/1133.—In pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and management of Messrs Nav Bharat Industries, Rohtak.

BEFORE SHRI HANS RAJ GUPTA, PRESIDING OFFICER, LABOUR COURT, ROHTAK

Reference No. 28 of 1966

BETWEEN THE WORKMEN AND THE MANAGEMENT OF MESSRS NAV BHARAT INDUSTRIES, ROHTAK

Present —

Sarvshri S. N. Vats and Tirath Ram for the workmen.
Shri Sumer Chand Jain on behalf of the management.

AWARD

An industrial dispute having arisen between the workmen and the management of Messrs Nav Bharat Industries, Rohtak, the State Government by means of their gazette notification No. 487-SF-III-Lab-I-66, dated 14th July, 1966, and in exercise of the powers conferred on them by Section 10(1)(c) of the Industrial Disputes Act, 1947 have referred to this Court for adjudication the matter mentioned below —

Whether the action of the management in terminating the services of Shri Amar Nath, Operator, Dalip Singh, Turner and Baljit Singh is justified and in order ? If not, to what relief they are entitled ?

Usual notices were issued to the parties and in response thereto the workmen filed a statement of their claims and the respondent management filed their written statement. It was pleaded by the workmen that the three claimants Sarvshri Amar Nath, Dalip Singh and Baljit Singh were dismissed from service without any charge-sheet or enquiry and that the action of the management was illegal and *mala fide*. The workmen therefore prayed that the three employees should be re-instated by the management with continuity of service and full back wages. On behalf of the management, it was pleaded that Sarvshri Amar Nath and Dalip Singh were employed as temporary workers on purely temporary jobs and their services were terminated by the management in accordance with the terms of their contracts of service which provided that the management could terminate their services at any time without assigning any reasons. As regards Shri Baljit Singh, it was pleaded that he was employed with effect from 6th September, 1965, as an apprentice for a period of six months and according to his contract of service, his services could be terminated by the management even earlier and had been so terminated by the management validly.

The following issue was framed in the case :—

Whether the action of the management in terminating the services of Sarvshri Amar Nath, Dalip Singh and Baljit Singh is justified and in order ? If not, to what relief they are entitled ?

The authorised representative of the workmen, Shri S.N. Vats, by his statement made before this Court on 4th November, 1966, withdrew the claim of Shri Dalip Singh. The claim in respect of Shri Dalip Singh is, therefore, dismissed as withdrawn and the termination of his services by the management is held to be justified and in order. I now proceed to discuss the cases of Sarvshri Amar Nath and Baljit Singh.

The case of the management is that these two employees were employed for specified periods and their services could be terminated by the management even earlier as provided for in clause 2 of their contracts of service. Exhibit RP/6 is the contract of service in respect of Shri Amar Nath. This shows that the management appointed him as a temporary worker for a period of nine months with effect from 6th September, 1965. Clause 2 of his contract of service provides that the period of service mentioned above, i.e., nine months is not of an assured duration and the management may dispense with his services earlier if his services were no longer required. Exhibit RP/2 is the contract of service in respect of Shri Baljit

Singh. It states that he was taken as an apprentice for a period of six months with effect from 6th September, 1965 and on the expiry of that period a report would be called for regarding his work and conduct from the Engineer and Foreman of the respondent concern and on receipt of that report the terms of his future service in the respondent concern would be settled with him. Clause 2 of his contract of service also provides that his apprenticeship may be terminated even before the expiry of six months without any notice or compensation or assigning any reason what so ever. In both the cases of Shri Amar Nath and Shri Baljit Singh, the management rely upon clause 2 of the contracts of service and contend that they had the contractual right to terminate the services of the claimants before the expiry of the specified periods of employments mentioned in the respective contracts. It has been contended that this Court cannot interfere in that contractual right of the management. The point raised is not a new one and has already been decided by the Supreme Court of India in 1960-I-LLJ-587, and 1966-I-LLJ-398. Their Lordships have been pleased to lay down in these judgments that even where the management has the contractual right to terminate the services of an employee without assigning any reason therefor and the validity of such termination is challenged in an industrial adjudication, it is competent to the Industrial Tribunal to enquire whether the order of termination has been effected in the bona fide exercise of its power conferred by the contract. If the discharge of the employee has been ordered by the management in bona fide exercise of its power, the Industrial Tribunal will not interfere with it, but it is open to the Industrial Tribunal to consider whether the order of termination is *mala fide* or whether it amounts to victimization of the employee or an unfair labour practice or is so capricious or unreasonable as would lead to the inference that it has been passed for ulterior motives and not in bona fide exercise of the power arising out of the contract. In such a case it is open to the Industrial Tribunal to interfere with the order of the management and to afford proper relief to the employee.

As stated above, Shri Amar Nath had been appointed for a period of nine months and Shri Baljit Singh for a period of six months with effect from 6th September, 1965 by their respective contracts of service. There is nothing on the record to show that these two employees had become surplus in the respondent concern before the expiry of these periods. On the contrary, Shri Sumer Chand Jain, manager of the respondent concern who has appeared as a witness in these proceedings on behalf of the management has admitted in his cross-examination that these two employees have not been retrenched. They, were therefore, not surplus in the concern. There is not even an allegation, much less any evidence, on behalf of the management that the work of these two employees had been unsatisfactory or that they had been guilty of any misconduct or had otherwise become undesirable to be kept in the employment any longer. There is, complete absence of evidence on the record the any circumstances which necessitated the termination of services of these employees by the management before the respective specified periods for which they had been employed,—*vide* their contracts of service. The case was argued on behalf of the management by their manager Shri Sumer Chand Jain. During the course of his arguments, I asked him to point out from the record to any reason on account of which these workmen have been discharged before the expiry of the specified periods. He was unable to show any reason whatsoever and contented himself by saying that these two employees were temporary employees and under the contracts of their service their services could be terminated even before the contractual periods. The orders of termination in this case are therefore so unreasonable as to lead to the inevitable inference that these have been passed by the management for ulterior motives and not in bona fide exercise of the power arising out of the contracts of service.

It is admitted on behalf of the management that Sari Amar Nath had been in their service for the period 9th March, 1965 to 4th August, 1965 and Shri Baljit Singh for the period 27th March, 1965 to 4th August, 1965 and that both of them had been retrenched with effect from 5th August, 1965. It is stated that they were appointed afresh with effect from 6th September, 1965 after obtaining fresh applications for appointment from them on 1st September, 1965, i.e., barely a month after their retrenchment. It was contended on behalf of the workmen that the management indulged in such unfair labour practices to deny to the workmen the benefits of modern labour laws which they get from continuous service and that the present terminations of services were also the result of such unfair labour practices on the part of the management. The argument does not appear to be wholly devoid of force in view of he failure of the management to explain in the present proceedings the reasons which prompted them to pre-maturedly terminate the services of these two employees. The documents put in by the management them selves show that on 5th August, 1965 they retrenched many workmen including Sarvshri Amar Nath and Baljit Singh. The union raised an industrial dispute in the matter by serving the demand notice ex. RP/2A on the management. By this demand notice, the union charged the management of selling the raw material in the black market and then

retrenching the workmen on the pretext of shortage of raw material. The union also charged the management of unfair labour practice by effecting breaks in the services of the employees by getting fresh employment forms filled in from them after intervals. The industrial dispute resulted on 31st August, 1965 in the settlement (Ex. RP/4) between the management and the union under which the management reinstated as many as sixteen retrenched employees with 75 per cent back wages with promises of making permanent several of them.

I am satisfied that the management have failed to discharge the onus that lay on them of proving that their action in terminating the services of Sarvshri Amar Nath and Baljit Singh was justified. The termination of services of these two employees is therefore not justified or in order. The next question is of relief to be granted to these employees. They had been appointed for specified periods and their services automatically would have come to an end at the end of those periods. Shri Amar Nath's services would have come to an end on 5th June, 1966, i.e., nine months from 6th September, 1965 and Shri Baljit Singh's services would have come to an end on 5th March, 1966, i.e., six months from 6th September, 1965. The question of their reinstatement by the management now therefore does not arise. Each one of them is entitled to compensation equal to his full wages from the date of termination of his service viz. 29th January, 1966 to the date on which the specified period for which he had been appointed expired. Thus Shri Amar Nath is entitled to an amount equal to his wages for the period 29th January, 1966 to 5th June, 1966 at Rs 60 per month and Shri Baljit Singh is entitled to an amount equal to his wages for the period 29th January, 1966 to 5th March, 1966 at Rs 52/ per month . The amount due to Shri Amar Nath works out to Rs 256 (Rupees two hundred and fifty-six only) and that due to Shri Baljit Singh works ont to Rs 66/- (Rupees sixty-six only). The management would also pay to each of them a sum of Rs 15 (Rupees fifteen only) as costs of these proceedings. I award accordingly.

This award is submitted to the Government of Haryana, Department of Labour as required under Section 15 of the Industrial Disputes Act, 1947.

HANS RAJ GUPTA,
Presiding Officer,
Labour Court, Rohtak.

Dated 31st December, 1966.

The 11th January, 1967

No. 1517-3Lab.-66/.—Whereas in view of the present National Emergency, production in Defence Factories has to be considerably stepped up to meet defence requirements.

Now, therefore, the Governor of Haryana in exercise of powers conferred by section 5 of the Factories Act, 1948 (Central Act No. LXIII of 1948) is pleased to further exempt the Defence Factories and EME Workshops in the State of Haryana from the provisions of Sections 51, 52, 53, 54, 56 and 79 of the said Act, for another period of three months, with effect from 19th November, 1966, subject to the following conditions, namely:—

(1) That the workers who may be deprived of the weekly holidays provided in Section 52 of the aforesaid Act may be given compensatory holidays in lieu of all such weekly holidays which may not be allowed to them as far as possible.

(2) That under Section 79 leave may be refused where necessary in the exigencies of service except in the case of illness and that a provision is made for accumulation of leave without limit so that the workers do not lose the benefit of leave so refused.

B.L. AHUJA,
Secretary to Government, Haryana,
Labour and Employment Departments.

AGRICULTURE AND DEVELOPMENT DEPARTMENT
(MARKET COMMITTEES)

The 6th January, 1967

No. 2309-Agr. IX-66/913.—In pursuance of the provisions of clause (b) of rule 10 of the Punjab Market Committee Chairman and Vice-Chairman (Election) Rules, 1961, the Governor of Haryana is pleased to publish the election of Shri Dhaja Ram, Member, Market Committee, Jind, district Jind, as Chairman of the said Committee.

R. N. CHOPRA,
Commissioner, Agricultural Production and Rural Development and Secretary to Government, Haryana, Development and Agriculture Department.